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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

DAVE McKERNAN,

Plaintiff,

v.

HARRINGTON COMPANY and
GOLDEN WEST ENTERPRISES,

Defendants.

Cause No. _____

NOTICE OF REMOVAL

TO: Dave McKernan, Plaintiff; Wall, McLean & Gallagher, PLLC, Plaintiff's Attorneys; and Silver Bow County Clerk of District Court:

Defendants Harrington Company ("Harrington") and Golden West Enterprise, Inc. ("Golden West"), incorrectly identified as Golden West Enterprises in the caption, (collectively referred to as "Defendants"), respectfully

give notice and show the Court:

1. On February 21, 2019, an action was commenced against Defendants in the Montana Second Judicial District Court, Silver Bow County, entitled *Dave McKernan, Plaintiff, v. Harrington Company and Golden West Enterprises, Defendants*, Cause No. DV-19-55. See Compl. & Demand Jury Trial, Feb. 21, 2019 (“Compl.”). On or about April 18, 2019, Plaintiff requested that Defendants acknowledge and waive service of the summons. Defendants have not yet acknowledged and waived service. This Notice is therefore timely under 28 U.S.C. § 1446. True and correct copies of the Civil Cover Sheet, Complaint, and Summons are attached hereto as Exhibits A, B, and C, respectively. No further proceedings have been had in the action.

2. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331, which provides, “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” Specifically, Count I of the Complaint asserts violations of federal discrimination laws and the Americans with Disabilities Act. Compl. ¶ 20. Count II of the Complaint asserts violations of the Family Medical Leave Act. Compl. ¶¶ 22-25. Accordingly, this Court has original jurisdiction over this action, and the action may be removed to this Court under 28 U.S.C. § 1441(a).

3. To the extent Plaintiff also alleges claims of employment discrimination under state law, this Court has jurisdiction over all other claims in Plaintiff's Complaint under the supplemental jurisdiction statute, 28 U.S.C. § 1367(a), because such claims are so related to Plaintiff's federal claims that they form part of the same case and controversy under Article III of the United States Constitution.

4. Under 28 U.S.C. § 1441(a), venue of this removed action is proper in this Court as the district and division embracing the place where the state action is pending.

5. Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly give the adverse party written notice of the filing of this Notice of Removal, and promptly file a copy of this Notice of Removal with the Clerk of the Montana Second Judicial District Court, Silver Bow County, Montana. Specifically, Defendants will file a copy of this Notice of Removal with the Clerk of the Montana Second Judicial District Court, Silver Bow County, Montana within seven days of the filing of this Notice as required by Local Rule 3.3(a).

6. Pursuant to Federal Rule of Civil Procedure 81(c)(2)(C), Defendants will file their Answer within seven days after filing the Notice of Removal.

WHEREFORE, Defendants pray that the action now pending against them in the Montana Second Judicial District Court, Silver Bow County, be removed to this Court.

DATED this 7th day of May, 2019.

Attorneys for Defendants:

GARLINGTON, LOHN & ROBINSON, PLLP

By /s/ Kathryn S. Mahe

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2019, a copy of the foregoing document was served on the following persons by the following means:

_____ Hand Delivery
1, 2 _____ Mail
_____ Overnight Delivery Service
_____ Fax (include fax number in address)
_____ E-Mail (include email in address)

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